

Isaac M. Pachulski (CA Bar No. 62337)
Debra I. Grassgreen (CA Bar No. 169978)
PACHULSKI STANG ZIEHL & JONES LLP
150 California Street, 15th Floor
San Francisco, CA 94111
Telephone: (415) 263-7000
Facsimile: (415) 263-7010
Email: dgrassgreen@pszjlaw.com

Eric Seiler (admitted *pro hac vice*)
Jason C. Rubinstein (admitted *pro hac vice*)
FRIEDMAN KAPLAN SEILER AND ADELMAN LLP
7 Times Square
New York, NY 10036-6516
Telephone (212) 833-1103
Facsimile (212) 373-7903
Email: eseiler@fklaw.com

*Attorneys for The Baupost Group, L.L.C.,
as the managing general partner and investment
manager for certain entities that indirectly
hold subrogation claims*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

-and-

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

** All papers shall be filed in the lead case,
No. 19-30088 (DM)*

Case No. 19-30088 (DM)
Chapter 11
(Jointly Administered)

**JOINDER IN THE AD HOC GROUP OF
SUBROGATION CLAIM HOLDERS' REPLY
IN SUPPORT OF DEBTORS' MOTION
PURSUANT TO 11 U.S.C. §§ 363(b) AND 105(A)
AND FED. R. BANKR. P. 6004 AND 9019 FOR
ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTORS TO ENTER INTO
RESTRUCTURING SUPPORT AGREEMENT
WITH THE CONSENTING SUBROGATION
CLAIMHOLDERS, (II) APPROVING THE
TERMS OF SETTLEMENT WITH SUCH
CONSENTING SUBROGATION
CLAIMHOLDERS, INCLUDING THE
ALLOWED SUBROGATION CLAIM
AMOUNT, AND (III) GRANTING RELATED
RELIEF**

Date: October 23, 2019
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

1 The Baupost Group, L.L.C., as the managing general partner and investment manager for
2 certain entities that indirectly hold subrogation claims (“**Baupost**”) hereby submits this Joinder (the
3 “**Joinder**”) in the *Reply of the Ad Hoc Group of Subrogation Claim Holders in Support of Debtors’*
4 *Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(A) and Fed. R. Bankr. P. 6004 and 9019 for Entry*
5 *of An Order (I) Authorizing the Debtors to Enter into Restructuring Support Agreement with the*
6 *Consenting Subrogation Claimholders, (II) Approving the Terms of Settlement with Such Consenting*
7 *Subrogation Claimholders, Including the Allowed Subrogation Claim Amount, and (III) Granting*
8 *Related Relief* [Dkt. No. 4348] (the “**Subrogation Group Reply**”). Baupost is a substantial creditor
9 of these estates, a major holder of insurance subrogation claims, and a member of the Steering
10 Committee of the Ad Hoc Group of Subrogation Claim Holders (the “**Ad Hoc Subrogation**
11 **Group**”).¹

12 Notwithstanding the flurry of objections to the Motion,² one thing is not fairly disputable—
13 settling \$20 billion of asserted subrogation claims against these estates for \$11 billion is a good idea.
14 Instead of challenging this critical component of the proposed settlement (the substantial
15 compromise of the subrogation claims), the objections to the Motion fall into two general categories:
16 objections to specific provisions of the restructuring support agreement (“**RSA**”) and objections to
17 the Debtors’ plan of reorganization. The former—objections to the RSA—are relatively narrow and
18 have been fully addressed in the Subrogation Group Reply in which Baupost joins. Significantly,
19 the Ad Hoc Subrogation Group and the Debtors have agreed to certain key modifications to the RSA
20 in response to the objections. Objections to specific provisions of the Debtors’ plan need not be
21 determined in connection with approval of the RSA. The RSA simply binds the Debtors to
22 prosecute a plan consistent with its terms; the Court is not being asked to determine at this time
23 whether that plan is confirmable. There will be ample time for interested parties to object to the
24 Debtors’ plan and for the Debtors to make any appropriate modifications to it.

26 ¹ Baupost’s holdings of equity, subrogation claims, other unsecured wildfire claims, and other rights are set
27 forth in the *Fifth Amended Verified Statement of the Ad Hoc Group of Subrogation Claim Holders Pursuant*
28 *to Bankruptcy Rule 2019* [Dkt. No. 4302].

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Subrogation Group Reply.

1 Baupost submits this Joinder to underscore an important attribute of the Ad Hoc Subrogation
2 Group's \$11 billion proposed settlement with the Debtors that the TCC overlooks: the proposed
3 settlement makes it more, not less, likely that the Debtors will remain solvent and that individual
4 Fire Victims will be paid in full.

5 The TCC argues that the Court should not approve the proposed settlement now because,
6 until the estimation proceedings before Judge Donato "are completed in March, no one in these
7 Cases can credibly argue that they know what is required to pay Fire Victims in full." TCC
8 Opposition to Motion [Dkt. No. 4232] at 2. The TCC further argues that, in a scenario in which this
9 Court approves the proposed settlement and Judge Donato then "estimate[s] high" (*i.e.*, estimates the
10 individual Fire Victims' damages at a level that significantly exceeds the cap contemplated by the
11 Debtors' proposed plan), the Debtors could be rendered insolvent and have insufficient distributable
12 value to fully pay the Ad Hoc Subrogation Group's \$11 billion allowed claim *and* also pay
13 individual Fire Victims for "the entirety of their damages." *Id.* at 3. To avoid the Debtors'
14 insolvency and a scenario in which individual Fire Victims are not paid in full, the TCC insists that
15 the treatment of the Ad Hoc Subrogation Group's claims should be resolved "solely in connection
16 with plan confirmation"—or at least deferred until some unspecified point when the TCC has
17 complete confidence that individual "Fire Victims will receive an actual recovery of their actual
18 damages, in full." *Id.*

19 The TCC's argument fails to appreciate that the Ad Hoc Subrogation Group members'
20 settlement of their \$20 billion in claims for \$11 billion at this stage of the case dramatically increases
21 the likelihood that the Debtors will remain solvent and be able to pay individual Fire Victims in full
22 even if Judge Donato were to "estimate high." The reason for this is that the same factual and legal
23 findings that would be necessary for the Debtors' liability to the individual Fire Victims to be
24 "estimate[d] high" would also result in the Ad Hoc Subrogation Group's members being entitled to
25 recover damages that approach or even exceed \$20 billion. *First*, the Debtors would need to be
26 found (or estimated to be) liable for the Tubbs Fire—which alone was responsible for approximately
27 40% of the tens of billions of dollars in property damage, as well as other injuries, caused by the
28

1 2017 and 2018 Northern California Wildfires.³ If the individual Fire Victims fail to establish the
2 Debtors' liability for the Tubbs Fire, they will be unable to recover for *any* of their billions of dollars
3 in claimed injuries arising from that fire. *Second*, the Debtors would need to be found (or estimated
4 to be) negligent in connection with the 2017 and 2018 Northern California Wildfires. If the
5 individual Fire Victims are unable to establish the Debtors' negligence for any particular fire, they
6 will be unable to recover for personal injury, wrongful death, or emotional distress relating to that
7 fire. At most, they will be able to recover damages for their uninsured property losses—and then
8 only if the Debtors are deemed liable under the theory of inverse condemnation. *See generally*
9 *Baker v. Burbank-Glendale-Pasadena Airport Auth.*, 39 Cal. 3d 862, 866 (1985) (inverse
10 condemnation action arises only from the “the taking or damaging . . . of property”). Thus, the only
11 scenario in which the Debtors' liability to the individual Fire Victims is “estimate[d] high” is one in
12 which the individual Fire Victims establish that the Debtors' equipment caused the Tubbs Fire *and*
13 that the Debtors' negligence was responsible for all of the major 2017 and 2018 Wildfires (including
14 the Tubbs Fire).

15 In this scenario, if the Court declines to approve the proposed settlement and the Ad Hoc
16 Subrogation Group's members, litigating side-by-side with the individual Fire Victims, prevail in
17 demonstrating that PG&E caused the Tubbs Fire and acted negligently, the Ad Hoc Subrogation
18 Group members' damages would approach or even exceed \$20 billion—an amount that, in
19 combination with the individual Fire Victims' damages, could tip the Debtors into insolvency and
20 impair their ability to pay individual Fire Victims in full.

21 The proposed settlement redounds to the benefit of the individual Fire Victims by
22 substantially reducing the risk of the Debtors' insolvency and freeing up over \$9 billion in estate
23 value from which the individual Fire Victims (including uninsured individual Fire Victims who have
24 no conceivable made-whole claims) can look to recover in a scenario in which they prevail in
25 establishing that PG&E equipment caused the Tubbs Fire and that PG&E's negligence caused the
26 2017 and 2018 Northern California Wildfires.

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28 ³ *See* Debtors' Motion Pursuant 11 U.S.C. §§ 105(a) and 502(c) for the Establishment of Wildfire Claims
Estimation Procedures [Dkt. No. 3091], at 20 (“The TCC estimates the Tubbs Fire caused at least \$18 billion
in damages.”).

1 The TCC obviously recognizes the benefits of the Court's granting the Ad Hoc Subrogation
2 Group members an \$11 billion allowed claim. The TCC's own filed plan of reorganization [Dkt.
3 No. 4257] is premised on the Ad Hoc Subrogation Group members' claims being "settled and
4 allowed in the aggregate amount of \$11 billion," as part of a plan that would cap the individual Fire
5 Victims' damages (together with those of Public Entity claimants) at \$14.5 billion irrespective of an
6 estimation in excess of that amount. Presumably, the TCC believes that its proposed plan (which
7 contemplates a cap on the individual Fire Victims' claims that is billions of dollars higher than the
8 cap embedded in the Debtors' proposed plan) would not make the Debtors insolvent. This confirms
9 that (1) there is, in fact, no dispute among the parties with respect to the appropriateness of the
10 Debtors' \$11 billion proposed settlement with the Ad Hoc Subrogation Group's members, and (2)
11 allowing the Ad Hoc Subrogation Group's claims in this amount will enable the Debtors to pay the
12 individual Fire Victims and the Public Entity claimants in full and thereby fulfill, and obtain the
13 benefits of, AB 1054.

14 Finally, it is clear that the TCC and Noteholders' joint plan would be unconfirmable in an
15 "estimate high" scenario in which the Court has also rejected the proposed \$11 billion settlement.
16 Even after leaving little to no value for existing equity holders, the TCC and Noteholders' joint plan
17 assumes that the Debtors have at most \$25.5 billion in value to distribute between and among the Ad
18 Hoc Subrogation Group's members, the individual Fire Victims, and the Public Entity claimants. If
19 the proposed settlement is not approved and the Ad Hoc Subrogation Group's members establish
20 their entitlement to more than \$20 billion of this amount, then the TCC and Noteholders' joint plan
21 will be unable to satisfy the claims of all Fire Victims and, consequently, could not be confirmed.
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1 Dated: October 21, 2019

PACHULSKI STANG ZIEHL & JONES LLP

2 /s/ Debra I. Grassgreen

3 Isaac M. Pachulski

4 Debra I. Grassgreen

5 - and -

6 Eric Seiler (admitted *pro hac vice*)

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